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No. 94-608

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

CITY OF YONKERS,

Petitioner,

vs.

UNITED STATES and YONKERS BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

In opposing certiorari, respondents United States and NAACP have failed to squarely address the issues of federalism and remedial authority raised by the petition of the City of Yonkers ("City"). First, respondents refuse to accept the fact that in evaluating a proposed remedial plan, a good faith workable proposal of the municipal defendant is entitled to deference. Second, they urge this Court to allow lower courts broad discretion to usurp local administrative functions with a Special Master. Both notions are clearly contrary to accepted principles of federalism that constrain a district court's remedial authority.

1. Respondents claim that the notion of deference to a plan proposed by a municipal defendant is without merit. U.S. Opposition at 5; NAACP Opposition at 6. They erroneously claim that the district court found that Yonkers' remedial plan would not work and it was therefore free to fashion its own plan.

The district court made no such finding. The district court found that: (1) certain revisions to the existing housing component of the plan would increase its effectiveness; and (2) with such revisions it would approve the existing housing plan with a 250 unit goal. A-99. The City did not oppose those revisions to its existing housing plan. But, the district court never found that the core of the City's Plan – heavy reliance on existing housing – simply would not work. A-53, 99.

The real issue, which is entirely unaddressed by respondents, is the effort by the district court to micro-manage urban planning in Yonkers through the 550 unit high density new construction program under the direction of a bureaucracy created by the district court. The City proposed lower density town home projects where the beneficiary class could achieve

the goal of home ownership in integrated neighborhoods. The district court never found that such an approach was unworkable; rather, it preferred the high density mid- and high-rise projects proposed by its own agency, the Fair Housing Implementation Office, with the support of the plaintiffs.[1] The notion of deference played no role in the district court's evaluation of the City's new construction proposal.

Respondents turn a blind eye to the district court's substitution of itself for the lawful planning authorities of the municipal defendant. The failure of the lower courts to require deference to the City's unquestionably workable approach to construction of new remedial housing warrants correction by this Court.

2. Respondents claim the district court is justified in appointing a Special Master with broad administrative authority over the day-to-day of implementation of the remedy because of the length of time that has passed and "petitioner's history of noncompliance." U.S. Opposition at 7. Again, respondents ignore the unrebutted record of the efforts of the City of Yonkers to resolve this litigation and hasten the day when federal jurisdiction may be terminated. The City has supported appointment of a monitor. Respondents simply offer no adequate justification to vest *administrative* control in a Special Master.

Since the resolution of the crisis of 1988, *see Spallone v. U.S.*, 493 U.S. 265 (1990), there is no evidence of "noncompliance" by the City in the implementation of the Long Term

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[1] There could be no suggestion that the City's new construction program was unworkable. The district court credited the success of the City-sponsored Trinity Court town home project on the west side of the Yonkers. A-86. The City Plan proposed to replicate that successful model on the east side of Yonkers.

Plan component of the Housing Remedy Order. The district court and all parties acknowledged as early as 1990 that the private-sector driven Long Term Plan Order simply was not working because of the downturn in the real estate market of the late 1980's.[2] There has never been a dispute that some modification to the 1988 Long Term Plan Order was necessary. Respondents' worn out claim that the district court has unlimited authority due to recalcitrance of past governments of the City some six years ago is simply unavailing. There is no finding here of current recalcitrance or obstruction to justify appointment of a Special Master with day-to-day administrative authority over the implementation of the remedy.

Since the filing of the City's petition on October 3, 1994, the Housing Special Master's bureaucratic control over the remedy has grown. The Special Master currently has several staff members that devote major portions of their time to this project (at staff rates of $125 hour), an in-house lawyer working on the project, and has now hired her own outside New York counsel. Monthly bills from the Special Master to the City now exceed $40,000 per month on some occasions. Meanwhile, the other components of the district court's bureaucracy – such as the $500,000 annual cost for the Fair Housing Implementation Office – go on. There is no end in sight to these costs and rivalries between these bureaucrats are growing.

In 1992 the City moved the Court to approve a comprehensive plan that the City would fully implement by early

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[2] The claim of the United States that the City was responsible for failure to implement the Long Term Plan over a three year period is wrong. U.S. Opposition at 2. Implementation of the original plan was vested in FHIO, an agency responsible to the district court.

1996. Had the district court approved the City's proposed order, we would be nearing the end of that process and hundreds of families would now be enjoying the benefits of a remedy. But, the district court rejected the City approach and has vested control in an unwieldy and expensive court-controlled bureaucracy that – despite the expenditure of millions of dollars in public funds – has produced no significant results. Intervention by this Court is necessary to redefine the boundaries of a district court's authority to create and supervise a bureaucracy to carry out its orders. If there was ever a case that was ripe to present such an issue, this case is it.

CONCLUSION

Petitioner City of Yonkers respectfully requests this Court to grant its petition for writ of certiorari, vacate the orders of the lower courts, and remand this cause for further proceedings.

Dated: February 28, 1995

Respectfully submitted,

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